FILE COPY

FILED
OCT 30 193
CHARLES ELMORE CR
CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 436.

In the Matter

of

UNITED CIGAR STORES COMPANY OF AMERICA,
Debtor.

JOSEPH E. OTIS ESTATE LAND TRUST, *et al.*,
Petitioners,

—against—

IRVING TRUST COMPANY, as Trustee of UNITED CIGAR STORES COMPANY OF AMERICA, *et al.*,
Respondents.

PETITIONERS' REPLY BRIEF.

SUSAN BRANDEIS,
Counsel for Petitioners.

THE COURT PRESS, N. Y. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 436.

In the Matter

of

UNITED CIGAR STORES COMPANY OF AMERICA,
Debtor.

JOSEPH E. OTIS ESTATE LAND TRUST, *et al.*,
Petitioners,

—against—

IRVING TRUST COMPANY, as Trustee of UNITED CIGAR STORES COMPANY OF AMERICA, *et al.*,
Respondents.

PETITIONERS' REPLY BRIEF.

This Court Has Already Granted a Review in the Companion Cases to This Cause.

Petitions for certiorari were granted on October 26, 1936, in City Bank Farmers Trust Company, petitioner, against Irving Trust Company, *et al.*, respondents, No. 260, and Mrs. John S. Meadows, petitioner, against Irving Trust Company, *et al.*, respondents, No. 151. The said two cases and the instant case were argued, submitted and decided together below.

In fact the said two cases were decided on the authority of the instant case.[1] The issues involving the interpretation of Section 77B of the Bankruptcy Act in all three cases are similar and in part identical.

In the light of the reviews granted, there can no longer be a question that the issues presented in the instant case are of a character properly to be reviewed by this Court.

This Court Has Complete Jurisdiction.

I. The brief in opposition asserts that all 94 claims are not properly before the Court on the petition filed. The petition here is entitled exactly as were the orders of the lower Court disposing of the issues herein (R. 791, 806). Respondents may not now treat as separate matters that which was litigated and disposed of below as a whole. The Court is not required to search the record as the petition seeks a review of a single order covering all 94 claims. The names of all the petitioners appear at Record 2, 3, 4, 5, and a stipulation shortening the record appears at Record 699 *et seq.*

If the respondents' position on this subject were well taken, it would have been necessary to burden this Court with 94 separate petitions to review a single order.

II. When the petition for rehearing herein was filed with respect to the single order entered, it

---

[1] *In re United Cigar Stores Co. of America (City Bank Farmers Trust Co., appellant)*, 83 F. (2d) 209. *In re United Cigar Stores Co. of America (Mrs. John S. Meadows, appellant)*, 83 F. (2d) 207.

stayed the mandate under Rule 26 of the Circuit Court of Appeals for the Second Circuit. The order sought to be reviewed did not become final until the entry of the order denying the motion for a rehearing. This Court has held that the limitation on the time to file a petition does not begin to run until the order denying a motion for rehearing has been entered.[2] The respondents did not move to sever the claims in the Court below, nor did the Court do so of its own motion. The petition for reargument was directed to the single order which had been made. It was disposed of by a single order.

Respectfully submitted,

SUSAN BRANDEIS,
Counsel for Petitioners.

---

[2] *United States* v. *Ellicott*, 223 U. S. 524, 539; 56 L. Ed. 535.